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January 22, 1998

HAND DELIVERED

Magalie Salas, Esquire

Secretary

Federal Communications Commission

1919 M Street, NW

Room 222

Washington, D.C. 20554

Re: **Sierra Digital Communications, Inc., Petition for Rule Making to Accommodate Point-to-Point Operations in the 24 GHz Band Under Part 15 of the Commission's Rules**
RM-9189

**REPLY OF SIERRA DIGITAL COMMUNICATIONS, INC. TO
"CITATION TO ADDITIONAL AUTHORITY"
OF THE AMERICAN RADIO RELAY LEAGUE, INC.**

Dear Ms. Salas:

On behalf of Sierra Digital Communications, Inc. ("Sierra"), I am filing the original and one copy of this written *ex parte* communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

Sierra hereby replies to the document captioned "Citation to Additional Authority" filed by the American Radio Relay League, Inc. ("ARRL") in the above-captioned proceeding on January 14, 1998.

ARRL argues that Commission decisions dated 1980 and 1983, respectively, are precedent against the Commission's authorizing point-to-point operations at 24 GHz under Part 15. As shown below, those decisions neither require nor warrant denial of Sierra's Petition.

First, those decisions are 15 and 18 years old. There have been almost two decades of dramatic change in Part 15 equipment and services since they were written. In the early 1980s, Part 15 accommodated inexpensive consumer gadgets, such as garage door openers and remote control toys. Today, in addition to serving consumers, Part 15 authorizes

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valuable services such as automated meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, and cordless telephones. These devices allow businesses to operate more effectively and efficiently, without the regulatory complexities of many licensed services.¹

Modern Part 15 services further include high-speed capabilities such as wireless PBX, multi-building PBX extensions, remote Internet access, multi-megabit network capabilities, and point-to-point communications. No such commercially-oriented services were contemplated in the Commission's 1980-1983 decisions. Accordingly, they cannot be valid precedent for decisions about present-day Part 15 operations. And even if they were, the Commission should not hesitate to revisit an outdated decision, especially one that is clearly inconsistent with today's rapidly changing technological environment.

Second, the point-to-point operations the Commission declined to bring under Part 15 in 1980 were apparently authorized at 100 milliwatts output power² -- more than 100 times the power proposed by Sierra.

Third, the basis for the 1980 decision has lost its validity. The Further Notice cited by ARRL states:

Devices included under Part 15 operate with low power and are widely distributed to the general public, such as wireless microphones, toy walkie-talkies and garage door openers. While the [point-to-point] devices covered by this proceeding operate with low power, it does not appear that they meet the criteria of being widely distributed to the general public.³

Even if distribution to the general public was a criterion for Part 15 treatment in 1980, it certainly is not today. Hundreds of Part 15 products on the market are intended only for commercial or industrial applications. No one would seriously argue they are ineligible for certification under Part 15.

Fourth, the basis for the 1983 reconsideration is likewise inapplicable to this proceeding. The Commission wrote:

¹ Automatic Vehicle Monitoring Systems, 10 FCC Rcd 4695, 4714 (1995).

² Operation of Low Power, Limited Coverage Systems, 81 F.C.C.2d 140, 141 (1980) (First Report and Order). This order was released on the same day as the Further Notice of Proposed Rulemaking cited by ARRL as turning down Part 15 treatment for 24 GHz point-to-point.

³ Operation of Low Power, Limited Coverage Systems, 45 Fed. Reg. 55775 at ¶ 5 n.3 (Aug. 21, 1980) (Further Notice of Proposed Rulemaking).

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We do not find that it is appropriate to introduce a non-frequency coordinated, unlicensed communications service into the 24 GHz band. The band is allocated on a primary basis for Federal Government radiolocation use and on a secondary basis for non-Government radiolocation and amateur use, as well as for Industrial, Scientific and Medical Service (ISM) equipment. The frequencies are already being used by radar devices, and NTIA has recommended that the operations proposed by [the petitioner] not be permitted in the 24 GHz band because they would be inconsistent with the current allocated use of the band.⁴

The allocation at 24 GHz is not significantly different from several other bands used heavily by Part 15 equipment today.⁵ The primary obstacle in the quoted paragraph appears to be NTIA's opposition, which it expressed in a letter in to the Commission.⁶ Sierra served a copy of its present Petition for Rule Making on NTIA (and so indicated on its Certificate of Service), but NTIA has not opposed or otherwise participated in this proceeding. It is fair to conclude NTIA no longer holds the objections it did in 1983.

Finally, ARRL continues to insist Sierra's proposed less-than-one-milliwatt output power is "high power" operation.⁷ Clearly it is not. But the terminology does not matter. Far more important is whether Sierra's proposal stands to cause harmful interference to amateur or other operations. Using data drawn from ARRL's own journal, Sierra has shown in detail that its proposal always presents less risk of interference than the present rules do, and that interference to planned amateur satellite operations at 24.00-24.05 GHz is astronomically unlikely.⁸ ARRL has neither rebutted these showings nor made a credible showing of its own that Sierra's proposal in fact threatens any harmful interference to amateur communications.

⁴ Operation of Low Power, Limited Coverage Systems, 94 F.C.C.2d 32, 35 (1983) (Second Report and Order) (footnote omitted).

⁵ These include 902-928 MHz, 2400-2483.5 MHz, and 5725-5850 MHz.

⁶ *Id.*, 94 F.C.C.2d at 35 n.7.

⁷ Citation to Additional Authority at 1 n.2.

⁸ Reply of Sierra Digital Communications, Inc. to Comments of the American Radio Relay League, Incorporated (filed Dec. 22, 1997).

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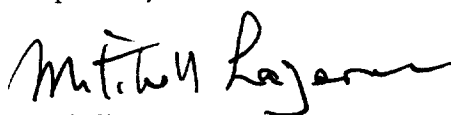
Conclusion

ARRL's recent pleading does not advance its position. The Commission should proceed to issue a Notice of Proposed Rulemaking.⁹

■ ■ ■ ■

Kindly date-stamp and return the extra copy of this letter. If there are any questions about this letter, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus
Counsel for Sierra Digital Communications, Inc.

ML:deb

Enclosure

cc: Richard M. Smith (By Hand Delivery)
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⁹ There is also no valid objection to Sierra's companion Request for Temporary Waiver, which presents the same issues as the Petition for Rule Making in this docket. The Commission should grant the waiver forthwith, pending resolution of the rulemaking.